

CORRESPONDENCE **ORIGINAL**
FILE

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM Docket No. 99-153
)	
READING BROADCASTING, INC.)	File No. BRCT-940407KF
)	
For Renewal of License of Station)	
WTVE(TV), Channel 51,)	
Reading, Pennsylvania)	
)	
and)	
)	
ADAMS COMMUNICATIONS)	
CORPORATION)	File No. BPCT-940630KG
)	
For Construction Permit for a)	
New Television Station On)	
Channel 51, Reading,)	
Pennsylvania)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Administrative Law Judge Richard L. Sippel

**READING BROADCASTING, INC.'S CONSOLIDATED
RESPONSE TO THE PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF ADAMS COMMUNICATIONS
CORPORATION AND THE ENFORCEMENT BUREAU**

Thomas J. Hutton
C. Dennis Southard IV
HOLLAND & KNIGHT LLP
2100 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20037
(202) 955-3000
Counsel for Reading Broadcasting, Inc.

October 23, 2000

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SUMMARY

This is a comparative license renewal case between Reading Broadcasting, Inc. ("Reading"), the incumbent licensee of WTVE(TV), Reading, Pennsylvania, and Adams Communications Corporation ("Adams"), the challenger. Reading is fully qualified to remain a Commission licensee. The challenger, Adams, is not qualified to be a licensee because its application is an abuse of the Commission's processes. Even if Adams were deemed to be qualified, Reading is the superior applicant under the Commission's comparative criteria.

A. Comparative Issue.

WTVE's record of public service from 1989-94 warrants a dispositive renewal expectancy. Both the Enforcement Bureau and Adams made factual and legal errors in analyzing WTVE's record. The record shows that WTVE ascertained issues of interest to its viewers and aired a substantial amount of responsive programming. The record also shows that Reading did not undergo an unauthorized transfer of control, as alleged by Adams and the Enforcement Bureau.

B. Misrepresentation / Lack of Candor Issue.

The record reflects a complete absence of deceptive intent by Mr. Parker which might support a misrepresentation / lack of candor finding against him. In particular, the representations, including the Mt. Baker and Religious Broadcasting descriptions and the Dallas Amendment are fully

responsive, provide all the information requested, and are consistent with all the Commission's requirements that can be clearly identified to an ascertainable certainty. Moreover, each of these representations were made in reasonable, good faith, reliance upon the advice of counsel, which, consistent with the Commission's past practice, policy, and precedent, precludes a misrepresentation / lack of candor finding.

Adams' arguments, which depend in large part upon unsupported conjecture, hyperbole, mischaracterized testimony and evidence, and the claim that both Parker and Mr. Wadlow testified falsely, do not compel a contrary conclusion.

C. Abuse of Process Issue.

Adams' principal rationalization for why its application was not filed in abuse of the comparative renewal process is that it was not motivated by an intention to obtain a settlement. Obtaining a settlement, however, is but one form of abusive intent and its absence, therefore, demonstrates neither the absence of other forms of abusive intent nor the existence of a proper intent. In that regard, the proper abuse of process inquiry is whether Adams filed its application solely to own and operate a broadcast television station in Reading, Pennsylvania. Even by Adams' own admissions, that was not the case.

Yet, even if the absence of an intent to obtain a settlement did demonstrate an intent to own and operate the station applied for, Adams'

“proof” in support of its contention that it did not file to obtain a settlement is untenable. Not only is Adams’ principal witness, Howard Gilbert, devoid of credibility, but there is substantial record evidence to the contrary that Adams treats as irrelevant. In that regard, Adams asserts that its connection with Monroe Communications and the concurrent timing of the Video 44 settlement and the commencement of Adams’ “home shopping crusade” “is of no consequence.” Such a conclusion is inconsistent with both Commission precedent and common sense. Adams also claims that it could not have filed with the intent to obtain a settlement because it knew the Commission’s rules precluded settlements such as the one Monroe had received. In contrast to that claim, however, Adams’ fee agreement with Bechtel & Cole expressly contemplated settlement, not only as a potential outcome, but one that would earn the law firm a substantial bonus. Likewise, Gilbert himself admits that he knew that the settlement rules could be waived.

In any case, the absence of an intent to obtain a settlement is not dispositive of whether Adams filed its application with the intent to own and operate a broadcast television station in Reading, Pennsylvania. Toward that end, Adams asserts that it diligently prepared its application by obtaining reasonable assurances of site availability and financing. In that regard, however, the record does not support Adams’ claim and clearly shows that its pursuit of such reasonable assurances was significantly less than diligent. In

any case, Adams' ability to satisfy those minimum requirements for completion of its application is plainly immaterial to establishing its good intentions (as opposed to the evidence of a lack of diligence, which is probative of abusive intentions) since obtaining such assurances would be required regardless of Adams' intentions.

Adams also claims that it diligently researched WTVE(TV)'s performance. In that regard, however, the record establishes that, not only did Adams' research efforts lack diligence, they were wholly fruitless with the result that Adams knew absolutely nothing about WTVE(TV) when it filed its application.

Adams' stated motivation for filing its application, "its desire to obtain a low-cost television station while advancing the public interest," is, at best, without credibility and, at worst, false and misleading. The totality of the evidence of Adams' intent does not demonstrate a bona fide interest in owning and operating Channel 51 in Reading, Pennsylvania. Adams' application was filed in abuse of the Commission's comparative renewal process and should, therefore, be dismissed.

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1. Reading Broadcasting, Inc. ("Reading"), by its undersigned counsel, respectfully submits this consolidated response to the Proposed Findings or Facts and Conclusions of Law of Adams Communications' Corporation ("Adams") and the Enforcement Bureau ("Bureau") regarding the comparative and qualification issues.

A. Comparative Issue.

1. Introduction.

2. WTVE's renewal expectancy will be dispositive of this case if both applicants are deemed qualified. Accordingly, Reading will not address the other comparative factors, other than to say that the divergences in the parties' analyses demonstrate that the Commission's comparative standard in this case is far too uncertain and unknowable to serve as a basis for not granting Reading's license renewal application. See Trinity Broadcasting of Florida, Inc. v. FCC, 211 F.3d 618 (D.C. Cir. 2000); see also Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 3 FCC Rcd 5179 (1988). With respect to the renewal expectancy issue, both the Bureau and Adams make errors of fact and law which lead them to an erroneous conclusion. While it is not possible for Reading to correct every inaccuracy, the following sections will address the major errors in those analyses.¹

2. The Bureau Mischaracterizes Reading's Ascertainment Efforts.

3. The Bureau's Brief, at ¶¶ 43-45, summarizes some of Reading's ascertainment efforts. However, in ¶ 46, in describing how those ascertainment

¹ To the extent Adams expresses doubts about the status of Reading's tower litigation, the answer is that there has been no change; Reading's appeal remains pending. In the event that appeal is denied, Reading will seek Commission approval for a different technical facility.

efforts were applied by the station, the Bureau either overlooks critical evidence or mischaracterizes evidence.

4. The Bureau first claims that the testimony of Daniel Bendetti indicates that WTVE's ascertainment usually did not have an impact on WTVE's public service programming, citing Tr. 1666-67, 1732-33. Bureau Brief, ¶ 46. However, Bendetti's testimony related specifically to the "ascertainment sheets," i.e., the ascertainment questionnaires that Reading has acknowledged were of limited value:

Sometimes the ascertainment sheets would come into play with maybe trying to do a topic. ... But most of the time, the ascertainment sheets that we had filled out, were collected and were put into the quarterly reports² and didn't really have an impact as far as what shows we usually do on Community Outreach or Kid's Corner.

[Benditti Testimony, Tr. 1733:7-15; see also Tr. 1775:11-23] This testimony is consistent with George Mattmiller's testimony that formal ascertainment questioning of community leaders proved to be of limited value. [Reading Ex. 6 at 5]

5. However, Bendetti then explained that staff referrals from contacts in the local community generated most of the ideas for Reading's public service programming:

Those types of shows [Community Outreach and Kid's Corner], generally, we relied on the rolodex that we had with some of the non-profit organizations in the area. We contact them regularly to see what was going on. Kim Bradley had a lot that responsibility.

² Actually, they were not. [See Reading Ex. 8, Appendices C-W]

[Bendetti Testimony, Tr. 1733:16-20; see also Tr. 1775:11-23]

6. The Bureau's Brief ignores Ms. Bradley's testimony about the role the station's ascertainment playing in generating ideas for public service programming. She testified:

a. A group of staffers reviewed tapes of material under consideration for News To You programs to find material responsive to community needs. [Bradley Testimony, Tr. 460:21-461:24]

b. WTVE's staff used its ascertainment process to pick topics for In Touch. [Bradley Testimony, Tr. 463:8-16; see also Bendetti Testimony, Tr. 1671:1 – 1672:15] During the license period, almost all of Reading's major non-profit organizations visited WTVE's studio at one time or another for the production of In Touch or Community Outreach programs. [Bradley Testimony, Tr. 490:23-25]

c. WTVE's staff picked Healthbeat (or Health Report) topics based on discussions with local community groups or hospitals. [Bradley Testimony, Tr. 464:21 – 465:11]

d. Community Outreach topics were selected on the basis of the station's ascertainment efforts. [Bradley Testimony, Tr. 465:13-21]

e. Topics for Streetwise were issues identified by the station's ascertainment process. [Bradley Testimony, Tr. 458:2-6; see also Reading Ex. 6 at 3-4]

f. Take 3 topics were selected by local high school students and their advisers. [Bradley Testimony, Tr. 465:22 – 466:16]

g. Topics for Elderly Update [Elderly Report] were picked by Carl Stewart, an independent contractor for WTVE, based on his extensive dealings with organizations working on issues important to senior citizens. [Bradley Testimony, Tr. 467:20 – 468:22; see also Schacht Dep. (Reading Ex. 30 at 4-11)]

h. Topics for Kids Korner were picked through ascertainment at local schools and with groups of youngsters touring the WTVE Studio. [Bradley Testimony, Tr. 468:23 – 469:25]

i. For The Informative Moment, WTVE used a bilingual volunteer from a local high school to contact the Spanish-speaking representatives of local organizations to select topics. [Bradley Testimony, Tr. 470:15 – 471:1]

7. By ignoring the foregoing testimony, the Bureau concludes that "ascertained community problems either merited a public service announcement or nothing at all." Bureau Brief at 24. This conclusion is contrary to the testimony of Bradley, Mattmiller and Bendetti cited in Reading's Brief at pp. 19-27.

The Bureau also states:

In a similar vein, Micheal Parker, RBI's general manager throughout the renewal period, testified that he did not tabulate ascertained needs, nor did he direct anyone to do so. In addition, Mr. Parker could not recall whether station personnel ever produced for his review a document that indicated what the community's significant problems were. Tr. 830-31.

Bureau Brief at ¶ 46.

8. However, Parker's testimony, as well as Mattmiller's and Bendetti's, shows that Parker generally delegated programming and public service matters to the staff of the station. [Parker Testimony, Tr. 830:5-24; Bendetti Testimony, Tr. 1685:6 – 1686:22; Reading Ex. 6 at 1 and 3] The fact that Parker was not regularly involved does not mean that nothing was done with the ascertainment results. The Bureau ignores evidence that WTVE's staff tabulated the issues generated by the ascertainment process and discussed those issues in meetings. [Bradley Testimony, Tr. 454:4-455:21; Reading Ex. 6 at 7]

9. The Bureau also incorrectly claims that WTVE relied primarily on its sales personnel to conduct ascertainment. Bureau Brief, ¶¶ 43, 141. Although Reading Ex. 6, ¶ 9 does state that sales personnel were a source of topics, it does not state that the sales personnel were the primary source of staff referrals. The record

shows that all of WTVE's staff was a source of referrals. [Mattmiller Testimony, Tr. 580:10-23; Bendetti Testimony, Tr. 1733:6 – 1734:5] Certainly the documentary evidence does not indicate that sales personnel were the primary source of ascertainment. [Reading Ex. 8, Appendix G at 2, Appendix H at 3, Appendix I at 2, Appedix P at 8-31, Appendix Q at 225-34, Appendix R at 274, Appendix T at 165-67, Appendix V at 58-70] Moreover, the evidence shows that WTVE's staff also conducted ascertainment through review of the local daily newspaper during the license term. [Bradley Testimony, Tr. 455:7-21, 459:13-460:13]

10. The Bureau claims that Reading presented conflicting testimony regarding the existence of ascertainment records. Bureau Brief at ¶ 141. No such conflict is cited, and there is no basis for questioning the testimony that WTVE's ascertainment records for the license term filled five or six legal document cartons. [Bradley Testimony, Tr. 499:3-25]

11. The Bureau also claims that "to save costs, RBI would gather free program material to fill the five to seven minute slots allotted by its home shopping format and then, later, determine what conceivable community concerns had been addressed." Bureau Brief at ¶ 141. This claim is unsupported by the record. Although certain programs (News To You, some Healthbeat programs and some Elderly Update programs) used pre-produced programming from satellite sources or tapes sent to the station, WTVE's staff selected the topics for these programs after having done ongoing ascertainment that identified issues of interest to WTVE's

viewers. [Bradley Testimony, Tr. 460:21 – 462:21]³ Other programs (In Touch, some Healthbeat programs, Community Outreach, Streetwise, Take 3, some Elderly Update programs, Kids Korner, For The People, The Informative Moment and Around Our Town) did not use pre-produced programming, but instead were taped in WTVE's studio, using topics generated by WTVE's ascertainment process. [Bradley Testimony, Tr. 458:2-6, 463:8-16, 464:21 – 471:11, 490:23-25; Reading Ex. 8 at 2-3; Bendetti Testimony, Tr. 1671:1 – 1672:15]

12. Finally, the Bureau argues that WTVE's ascertainment process was not as extensive as the ascertainment processes described in Fox Television Stations, Inc., 8 FCC Rcd 2361, 2370-71, recon. denied, 8 FCC Rcd 3583 (Rev. Bd.), modified, 9 FCC Rcd 62 (1993), aff'd sub nom. Rainbow Broadcasting, Inc. v. FCC, ____ F.3d ____, 1995 U.S.App. LEXIS 8736 (D.C. Cir. 1995) (Table), and other cases. Bureau Brief at ¶ 143. However, this assumes that ascertainment is a comparative factor, which it is not. Past cases have denied a renewal expectancy to stations that have not done any meaningful ascertainment, but they have not denied a renewal expectancy based on a finding that the renewal applicant's ascertainment efforts were comparatively weak. See, e.g., Simon Geller, 90 FCC 2d 250, 264-65 (1982), aff'd sub nom. Committee for Community Access v. FCC, 737 F.2d 74 (D.C. Cir. 1984) (renewal expectancy denied for station that did not air any

³ See e.g., Reading Ex. 8, Appendix S at 28-30 (of nine Healthbeat programs aired, one was produced by WTVE and two others included information obtained by WTVE about local hospitals and support groups); Reading Ex. 8, Appendix T at 25-
(footnote continues)

programming responsive to community needs). In fact, many of the seminal cases on renewal expectancy do not even address the nature or scope of the station's ascertainment efforts. See, e.g., Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), aff'd sub nom. Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982); Radio Station WABZ, Inc., 90 FCC 2d 818 (1982), aff'd sub nom. Victor Broadcasting, Inc. v. FCC, 732 F.2d 756 (D.C. Cir. 1983). In this case, WTVE conducted meaningful, ongoing ascertainment, which is an essential precondition to qualifying for a renewal expectancy. However, it is irrelevant how WTVE's ascertainment compares to ascertainment done by the Fox television station in Los Angeles or the Metroplex radio station in Fort Lauderdale.

3. The Bureau and Adams Misstate Reading's Record of Responsive Programming

13. The Bureau argues that WTVE's record of responsive programming was too weak to warrant a renewal expectancy. In particular, the Bureau criticizes the amount of issue-responsive programming by WTVE, the lack of a regularly scheduled air time and the lack of newspaper listings of WTVE's programming, and the extensive use of PSAs. Bureau Brief at ¶¶ 144-47. Adams makes similar claims, but Adams' quantitative analysis is skewed by Adams' faulty methodology.

14. The Bureau's Brief erroneously relies on Reading Ex. 8, Appendix A for its quantitative assessment of WTVE's programming. Bureau Brief at ¶¶ 73, 145.

27 (of seven Healthbeat programs aired, all seven contained information about local health news and events).

However, that document merely summarizes the station's recitations of programming in its quarterly issues and programs lists, to the extent available. Quarterly issues and programs lists are intended to be illustrative, and they are not required to list all issue-responsive programming. Revision of Programming and Commercialization Policies, 98 FCC 2d 1076, 1107-08 (1984). Reading Ex. 8, Appendix A understates the amount of public service programming aired by WTVE. For instance, it completely omits any quantitative information for the first two quarters of 1990 and it omits any reference to Today With Marilyn, a half-hour religious program aired for a substantial portion of the license term. [Reading Ex. 8, Appendix A; Mattmiller Testimony, Tr. 608:3-610:9; Adams Ex. 2, Appendix A, Attachment 1] Reading's Exhibit 8, Appendix A was prepared to show that WTVE's public service programming throughout the license term was aired throughout the day and not relegated to "graveyard hours" or early Sunday morning, when few people are watching television. [Reading Ex. 8 at 8-9 and Appendix A]

15. Reading's Exhibit 8, Appendix B is the best evidence of WTVE's quantitative performance. This composite week analysis consists of a series of spreadsheets showing the following amounts of issue-responsive programming:

1. 1989 (2 days): 58.5 program minutes and 42 PSA minutes per day (11.7 hours per week) = 7% issue-responsive programming
2. 1990: 24.5 program minutes and 16.5 PSA minutes per day (4.8 hours per week) = 2.8% issue-responsive programming
3. 1991: 21.5 program minutes and 27 PSA minutes per day (5.7 hours per week) = 3.5% issue-responsive programming

4. 1992: 22 program minutes and 33.5 PSA minutes per day (6.5 hours per week) = 3.9% issue-responsive programming
5. 1993: 72.5 program minutes and 35.5 PSA minutes per day (12.7 hours per week) = 7.5% issue-responsive programming
6. 1994 (5 days): 116.5 program minutes and 44.5 PSA minutes per day (18.8 hours per week) = 11.2% issue-responsive programming

16. Reading's Exhibit 8, Appendix B is a composite week analysis, which is the same methodology accepted in previous decisions. See, e.g., Metroplex Communications, Inc., 4 FCC Rcd 847, 850 (ALJ 1989) (subsequent history omitted).

17. The Bureau's quantitative analysis essentially ignores the improvement in WTVE's programming performance after Reading emerged from bankruptcy. [Reading Brief at p. 91] WTVE's post-bankruptcy performance is the most probative of the station's likely future performance. See Harriscope of Chicago, Inc., 5 FCC Rcd 6383 (1990). The Bureau's Brief also overlooks the significance of Reading's financial losses and difficult competitive posture throughout the license term. See Hubbard Broadcasting, Inc., 41 RR 2d 979, 988 (1977) (limited public service programming is acceptable in case of money-losing UHF station competing against VHF stations).⁴ The record shows that WTVE was

⁴ Adams attempts to challenge Reading's showing as to financial losses by pointing out that WTVE aired a religious program, Dr. Eugene Scott or Dr. Scott's Sunday Services, during portions of the 1989-94 license term. [Adams Ex. 2, Appendix A, Attachment 1 at 12-13, 40-71] See Adams Brief at 58-59. However, the airing of this non-entertainment program supports Reading's claim to a renewal expectancy. Although Reading's quarterly issues and programs lists generally did not include religious programming, the station is not required to list all of its non-

(footnote continues)

in bankruptcy for the first part of the license term, lost money every year of the license term, and faced extremely difficult competitive conditions as a UHF station located on the fringe of the Philadelphia market and sharing the market with another station also affiliated with the Home Shopping Network. [Reading Ex. 5 at 1-2; Reading Ex. 6 at 1-2] Reading served the public interest by keeping the station on the air notwithstanding the bleak financial situation.

18. The Bureau argues that Reading's quantitative showing is comparable to the 4-5% showing deemed inadequate in Harriscop of Chicago, Inc., 5 FCC Rcd 6383 (1990), recon. denied, 6 FCC Rcd 4948 (1991). Bureau Brief at ¶ 145. However, after emerging from bankruptcy, Reading's public service record improved significantly, to 7.5% in 1993 and 11.2% in 1994. [Reading Ex. 8, Appendix B at 8-9] This is superior to the 5.25% record deemed worthy of a renewal expectancy in Metroplex Communications, supra, 4 FCC Rcd at 8152.

entertainment programming in its quarterly issues and programs lists. Adams also objects to giving Reading credit for its religious programming (particularly Today With Marilyn, the Dr. Scott programs and Jimmy Swaggart's weekly telecast) because the programming was unpopular with some viewers. See Adams Brief at 58-59. Denying WTVE a renewal expectancy because it aired unpopular religious programming would violate the Communications Act, 47 U.S.C. § 326.

Adams also argues, based on evidence not admitted into the record, that Reading made a bad financial decision to make payments required under its management contract with Parker. See Adams Brief at 117-19. This argument is completely unfounded and irrelevant. Neither Adams nor the Commission is in a position to second-guess Reading's business dealings, including those relating to WTVE's affiliation agreement with the Home Shopping Network or Reading's agreement with Parker. The reality is that WTVE lost a significant amount of money throughout the license term.

19. The Bureau indicates that Reading's quarterly issues and programs lists sometimes refer to some programs as PSAs. Bureau Brief, footnotes 14, 15 and 17. Adams goes further, claiming that Reading has tried to re-classify PSAs as programs. Adams Brief at 38-41.

20. The reality is that for purposes of creating its daily logs, Reading generally classified all short-form public service programming as a "PSA." See, e.g., Reading Ex. 8, Appendix B, log for March 16, 1993] That practice carried over to the pre-printed affidavit forms that Reading usually attached to its quarterly issues and programs lists. [See, e.g., Reading Ex. 8, Appendix D at 39-131 (programming varying from 30 seconds to 58.5 minutes listed as "public service announcements")] However, in the narrative descriptions in the quarterly issues and programs lists, public service programming of 2 minutes or more was generally described as "segments" or "features" or "programs" while half-minute and minute-long public service programming was generally classified as "PSAs". [See, e.g., Reading Ex. 8, Appendix P at 4-23] Reading continued this differentiation in its hearing exhibits. [Bradley Testimony, Tr. 392:23-393:18; Gilmore Testimony, Tr. 504:18-505:15] At the hearing, counsel for Adams concurred that this was a "sensible" distinction. [Tr. 393:16] However, in its own quantitative analysis, Adams ignored all programming logged as a "PSA," regardless of the length and regardless of how it was described in the narrative in WTVE's quarterly issues and program lists. [Adams Ex. 2, Appendix A at 1] Thus, for instance, in its analysis for October 1, 1989, Adams ignored log entries for Streetwise and In Touch, which were 2-3 minute segments

aired more than once that day, as well as 30-60 second programming classified as PSAs (Weather, Spotlight 51, Have You Seen Me? and In the Community Interest, all produced by WTVE, as well as traditional PSAs such as Save The Children, AIDS Prevention and United Negro College Fund). [Adams Ex. 3, Daily Analysis, 10/1/89] The reality is that Reading's classification, far from overstating WTVE's record, actually understates the record because it treats WTVE-produced community-interest programming (e.g., Weather, Spotlight 51, Community Calendar, Have You Seen Me?, Pets of the Week and In the Community Interest) the same as a nationally-distributed PSA. Adams' quantitative showing, on the other hand, uses definitional sleight-of-hand to wipe out almost all of WTVE's public service programming.

21. Both the Bureau and Adams erroneously criticize for Reading for relying primarily on PSAs to satisfy its public service obligations. [Bureau Brief at ¶¶ 48, 147; Adams Brief at ¶¶ 38-41, 557] In the first place, both Adams and the Bureau erroneously rely on Public Service Announcements, 81 FCC 2d 346 (1980). That decision dealt with the pre-deregulation issue of how to classify PSAs for purposes of the Commission's promise versus performance license renewal standard.⁵ After deregulation, this decision became completely moot. See Revision of Programming and Commercialization Policies, 98 FCC 2d 1076 (1984). Adams

⁵ Interestingly enough, both Adams and the Bureau fail to acknowledge that the conclusion reached was to give broadcasters more credit for airing PSAs, which were deemed to be valuable and effective tools in transmitting public service messages. Public Service Announcements, 81 FCC 2d 1 at 367.

also erroneously relies on Normandy Broadcasting Corp., 8 FCC Rcd 1 (ALJ 1992). However, in that case the licensee could not show that it aired even as much as 1% issue-responsive programming, and it also failed to conduct ascertainment or prepare quarterly issues and programs lists. 8 FCC Rcd at 14-15. This case differs on all scores.

22. The Bureau and Adams also err in their factual premise. In 1989 and 1990, WTVE's public service program minutes exceeded its PSA minutes. [Reading Ex. 8, Appendix B at 4-5] In 1991 and 1992, WTVE's public service program minutes dropped slightly, while the PSA minutes increased. [Reading Ex. 8, Appendix B at 6-7] This gave a slight edge in minutes to PSAs over programs (189.5 PSA minutes per week versus 150 program minutes per week in 1991, and 236 PSA minutes per week versus 154 program minutes per week in 1992). However, in the more critical 1993-94 time period, program minutes increased substantially while PSA minutes increased moderately. [Reading Ex. 8, Appendix B at 8-9] In 1993, WTVE aired 508 program minutes per week (8 ½ hours) and 250 PSA minutes per week (4 hours). In the five days counted for the partial renewal year in 1994, WTVE aired 580 program minutes (9 ½ hours) and 223 PSA minutes (3 ½ hours). This included a significant amount of 30-minute and 60-minute programming. [Adams Ex. 2, Appendix A, Attachment 1 at 49-71] Accordingly, both Adams and the Bureau are wrong in asserting that WTVE relied primarily on PSAs to meet its public service obligations.

23. The Bureau also erroneously criticizes Reading for not having regularly-scheduled public service programming and for not having a programming schedule published in a local newspaper. Bureau Brief at ¶¶ 48, 146. The Bureau cites no authority holding that absence of prior notice of public service programming is a basis for downgrading a station's performance, and to Reading's knowledge there is no precedent supporting that position. In fact, there are thousands of broadcast stations that serve the public with intermittent, short-form public service programming for which there is no prior notice. Most of these stations are called radio stations. See, e.g., Metroplex Communications, Inc., supra, 4 FCC Rcd at 8152 (station aired two Sunday a.m. public affairs shows, but otherwise relied on news and public service features interspersed in its weekday "Morning Show" and a 60-second listener forum interspersed throughout its broadcast day); Radio Station WABZ, Inc., 90 FCC 2d 818, 836-37 (1982) (subsequent history omitted) (almost all of station's public service programming is less than half an hour in length). WTVE's home shopping format attracted a number of viewers who left the channel on for a long period of time, much like a radio station. [Mattmiller Testimony, Tr. 606:20-607:12] The audience that viewed WTVE's public service programming was no larger or smaller than the audience that viewed the station's home shopping programming. [Mattmiller Testimony, Tr. 591:5-12] Accordingly, there is no basis for downgrading WTVE's public service record based on the lack of prior notice.

24. The Bureau also criticizes Reading for repeating its public service programming and PSAs. Bureau Brief at ¶¶ 48, 145. Again, there is no precedent

for downgrading WTVE's record on this basis. There is no Commission policy preventing or discouraging repetition, nor should there be. If advertisers did not find value in repetition, why do we often see and hear the same advertisements on numerous occasions? The repetition generally involved WTVE's short-form programming and PSAs, which lend themselves to repeated airings, not the half-hour or hour-long shows aired on the station. This is a matter appropriately left to the licensee's discretion.

25. The Bureau and Adams also criticize Reading for not airing locally-produced news programming. Bureau Brief at ¶ 145; Adams Brief at ¶¶ 120-32. While it may be instructive to know how Adams or the Enforcement Bureau might have programmed the station, there is no Commission requirement or policy requiring local news programming. Reading, faced with operating losses as far as the eye could see, made the judgement that, as a UHF station operating on the fringe of the Philadelphia market, its market would not support a local news program. [Reading Ex. 5 at 1-2; Reading Ex. 6 at 1-2] Reading also made the judgment that its viewers had ample access to news from other sources. [Reading Ex. 5 at 2 and Appendix A] There is no basis for departing from a long-standing Commission policy of not second-guessing the licensee's decisions as to what type of public service programming to offer.⁶

⁶ Revision of Programming and Commercialization Policies, *supra*, 98 FCC 2d at 1087; *see* Bendetti Testimony, Tr. 1781:10-23 (public affairs programming was important to WTVE).

(footnote continues)

4. Adams' Public Witnesses Presented Little Or No Personal Knowledge Of WTVE's Programming

26. Both Adams and the Bureau recite summaries of the deposition testimony of Adams' public witnesses. Adams Brief at ¶¶ 193-207; Bureau Brief at ¶¶ 92-96, 148. Mr. Loos, emergency management coordinator for Berks County, recalled no contacts with WTVE except that WTVE did a series of "short spots on public safety" and contacted him to participate, but he was "not able to come up with a date" for doing so. [Adams Ex. 44 at 21:15 – 23:15] He did not watch WTVE during the 1989-94 period and therefore had no knowledge of its programming. [Adams Ex. 44 at 34:18-20] Mr. Medaglia, Registrar of Wills and Clerk of the Orphans Court for Berks County, and previously administrative supervisor of the District Attorney's office in Berks County, likewise did not watch WTVE during the 1989-94 time period. [Adams Ex. 45 at 15:24 – 16:5, 19:8-21] Mr. Troutman, Berks County Clerk of Courts, likewise did not watch the station. [Adams Ex. 46 at 17:24-18:11] Mr. Kimpland, media coordinator at Reading Area Community College, did not watch the station and stated that his only involvement with WTVE was in coordinating a student volunteer program at the station that was discontinued by the students, not by WTVE. [Adams Ex. 47 at 6:2 – 8:23] Mr. Baldinger, a television producer for Lucent Technologies and former operations manager for

The Bureau also questioned Reading's reference to "Around Our Town." Bureau Brief at p. 29 n. 16. References to this segment appear, inter alia, at Reading Ex. 8, Appendix F at 5 and Adams Ex. 3 at 64, 69, 70.

WTVE during 1980-82, had little knowledge of WTVE's programming, but had no basis to question the accuracy of Reading Ex. 8, which summarized the station's public service record from 1989-94. [Adams Ex. 48 at 11:10-12:18] This testimony is essentially meaningless, because the witnesses lack personal knowledge of the station's programming performance from 1989-94. This testimony certainly does not support the Bureau's conclusion that local politicians criticized the station for not airing news programming. See Bureau Brief at ¶ 148.⁷

5. Reading Did Not Undergo An Unauthorized Transfer of Control.

27. Both Adams and the Bureau erroneously claim that Reading underwent an unauthorized transfer of control in October, 1991, when it issued new stock in connection with its effort to emerge from bankruptcy. See Bureau Brief at 47-54, 78-80; Adams Brief at 99-112, 233-34. Neither cites any precedential authority for this conclusion. However, both claim that there was more than a 50% change in stock ownership in October, 1991, when Reading had only received Commission approval of a short-form transfer of control.⁸

⁷ Adams also criticizes Reading's public witnesses for testifying as to their personal involvement in Reading's public service programming. However, this testimony is consistent with similar testimony in past cases. See, e.g., Trinity Broadcasting of Florida, Inc., 10 FCC Rcd 12020, 12044-45 (ALJ 1995) (subsequent history omitted).

⁸ Adams continues to criticize Reading for a mistake by Reading's counsel, stating in a pleading that Reading's new stock was issued in 1992 when it was in fact issued in October of 1991. See Adams Brief at 103. This mistake, which is immaterial to the issue of whether there was an unauthorized transfer of control of

(footnote continues)